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State v. Costa Respondent's Brief Dckt. 41580

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MARIO FELIPE COSTA,

Defendant-Appellant.

No. 41580

Jerome Co. Case No.
CR-2012-5196

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEROME

HONORABLE ROBERT J. ELGEE
District Judge

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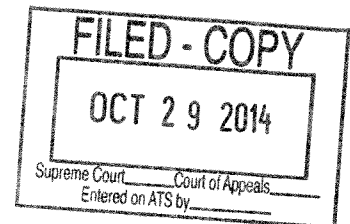


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STATEMENT OF THE CASE

Nature Of The Case

Mario Felipe Costa appeals from his judgment of conviction for felony driving under the influence, entered upon his conditional guilty plea. On appeal, he challenges the district court's denial of his suppression motion.

Statement Of The Facts And Course Of The Proceedings

On September 19, 2012, Officer Rasmussen received a report of shots being fired from a vehicle. (6/28/2013 Tr., p.10, Ls.12-22.) After getting a description of the vehicle, Officer Rasmussen pursued the suspects and, catching up with the pickup truck, pulled it over. (6/28/2013 Tr., p.11, L.14 – p.12, L.3.) Officer Rasmussen made contact with the driver, Costa, and began running his information. (6/28/2013 Tr., p.14, L.10 – p.15, L.15.) While he did this, Deputy Thiemann, who arrived at the scene with Officer Rasmussen, informed the officer that he could smell alcohol on Costa. (6/28/2013 Tr., p.15, Ls.19-23.) Officer Rasmussen requested that Deputy Thiemann perform field sobriety tests on Costa. (6/28/2013 Tr., p.15, L.24 – p.16, L.2.)

Deputy Thiemann had approached the vehicle's passenger side while Officer Rasmussen approached the driver's side. (6/28/2013 Tr., p.28, Ls.4-22.) Scanning the vehicle, he saw "a keg used for transporting beer" and that the passenger had an open container of alcohol. (6/28/2013 Tr., p.30, L.16 – p.31, L.8.) In addition to smelling alcohol on Costa, Deputy Thiemann also observed that Costa had bloodshot eyes, slurred speech, and slow motor skills. (6/28/2013 Tr., p.30, Ls.6-8.) Deputy Thiemann required Costa to perform several field sobriety tests, all of which Costa failed. (6/28/2013 Tr., p.32, L.2 – p.36, L.2.) The officers arrested Costa for driving under the

influence. (R., pp.9-12.) Costa submitted to a breath analysis at the jail and blew a 0.179 and a 0.162. (R., pp.11-13.)

The state charged Costa with felony driving under the influence, based on two prior convictions during the past ten years. (R., pp.72-75.) Costa filed a motion to suppress, alleging that the evidence acquired in this case was the fruit of an illegal stop, detention, and arrest. (R., pp.107-08.) The district court held a hearing on Costa's motion and denied it on the record. (See 6/28/2013 Tr.) Costa then entered a conditional guilty plea which preserved for appeal the district court's denial of his suppression motion. (R., pp.117-18.)

Pursuant to his guilty plea, the district court entered judgment against Costa and imposed a suspended sentence of five years with three years fixed, placing Costa on probation for a period of three years. (R., pp.139-45.) Costa filed a timely notice of appeal. (R., pp.160-62.)

ISSUE

Costa states the issue on appeal as:

Did the district court err when it denied Mr. Costa's motion to suppress evidence that was the product of his arrest because there was no probable cause to arrest Mr. Costa for driving under the influence of alcohol?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Costa failed to show error in the district court's denial of his motion to suppress evidence?

ARGUMENT

Costa Has Failed To Show Error In The District Court's Denial Of His Motion To Suppress Evidence

A. Introduction

On appeal, “[m]indful of the applicable standard of review,” and in light of the district court’s factual findings, Costa nevertheless “asserts that law enforcement lacked probable cause to arrest him for driving under the influence.” (Appellant’s brief, pp.6-10.) Application of the correct legal standards to the facts found by the district court, however, shows that there was sufficient probable cause to arrest Costa on suspicion of driving under the influence. Costa has failed to show that the district court erred by denying his suppression motion.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court accepts the trial court’s findings of fact that are supported by substantial evidence and exercises free review of the trial court’s determination as to whether constitutional standards have been satisfied in light of the facts found. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995).

C. Officers Had Probable Cause To Arrest Costa For Driving Under The Influence

The Fourth Amendment of the United States Constitution protects the people against unreasonable searches and seizures. The United States Supreme Court has

explained that “warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution.” Virginia v. Moore, 553 U.S. 164, 176 (2008); see also Maryland v. Pringle, 540 U.S. 366, 370 (2003); I.C. § 19-603. Probable cause is “the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that such person is guilty.” State v. Julian, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996). In determining whether the State has met the standard of probable cause, the Court considers the totality of the circumstances. Pringle, 540 U.S. at 371.

The district court made the following factual findings to support a probable cause determination: There was a keg in the back seat, placing alcohol in Costa’s proximity. (6/28/2013 Tr., p.70, Ls.3-6.) Costa smelled of alcohol. (6/28/2013 Tr., p.70, Ls.6-7.) Costa had bloodshot eyes, slow motor skills, and HGN. (6/28/2013 Tr., p.72, Ls.17-18.) Costa failed the field sobriety tests. He failed the HGN test because he would not follow the instructions and kept moving his head back and forth rather than tracking with his eyes. (6/28/2013 Tr., p.72, Ls.18-20.) He failed the walk and turn test because he missed his heel and toe a number of times. (6/28/2013 Tr., p.72, Ls.20-23.) He failed the one-legged stand test, bringing down his foot at only 23 seconds. (6/28/2013 Tr., p.73, Ls.3-6.) And the officer believed that Costa was intoxicated. (6/28/2013 Tr., p.72, L.24 – p.73, L.7.) Based on the totality of these circumstances, the district court correctly found that the officer had probable cause to arrest Costa and require him to submit to BAC testing. (6/28/2013 Tr., p.73, Ls.8-14.)

All of the district court’s factual findings were supported by the testimony of Deputy Thiemann (6/28/2013 Tr., p.29, L.21 – p.36, L.2) and have not been challenged

on appeal. Instead, Costa asserts that the district court should not have determined that police had probable cause to arrest Costa, despite its conclusive findings, because Officer Rasmussen did not detect signs of intoxication when he initially spoke with Costa; because Costa's attorney argued that he did not *technically* fail the HGN test (despite his failure to comply with the officer's instructions); and because Costa asserts that his inability to stand on a single leg for more than 23 seconds when at least 30 seconds was required "is a negligible difference." (Appellant's brief, p.9.) Each of these arguments fails.

First, Officer Rasmussen testified that he could not remember whether he smelled alcohol on the driver, not that he did not smell alcohol. (6/28/2013 Tr., p.16, Ls.3-5.) Of course, that's hardly surprising where the officer, responding to a report of shots fired, had a primary focus of weapons, not alcohol. (6/28/2013 Tr., p.14, Ls.10-14; p.16, Ls.6-8.) Second, as noted by the district court, Officer Rasmussen's testimony confirmed Deputy Thiemann's testimony that the deputy smelled alcohol on Costa. (6/28/2013 Tr., p.68, Ls.1-7.) Finally, even if the officer's testimony contradicted Deputy Thiemann's, which it did not, that would not dispel the deputy's probable cause, especially in light of Costa's failures on the field sobriety tests. As to Costa's other misguided assertions, both in fact constitute failures on the field sobriety tests, which provided probable cause to arrest him for driving under the influence.

Costa has failed to show error in the district court's denial of his suppression motion. Under the totality of the circumstances, officers had probable cause to arrest Costa for driving under the influence. The district court's ruling denying Costa's motion to suppress should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm Costa's conviction and the district court's denial of Costa's suppression motion.

DATED this 29th day of October, 2014.



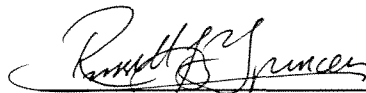
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of October, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm